

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNIVERSAL CITY STUDIOS, INC.,

Plaintiff,

-against-

NINTENDO CO. LTD. and
NINTENDO OF AMERICA, INC.,

Defendants.
-----X

:

:

:

:

:

:

:

82 Civ11 4259
(RWS)

Continued deposition of Third-Party
Witness WILLIAM M. REGAN, taken by the
Defendants pursuant to adjournment, at the
offices of Mudge Rose Guthrie Alexander &
Ferdon, Esqs., 20 Broad Street, New York,
New York, on Wednesday, April 13, 1983 at
10:10 o'clock in the forenoon, before
Joseph R. Danyo, a Shorthand Reporter and
Notary Public within and for the State
of New York.



WALTER SHAPIRO, C.S.R.
CHARLES SHAPIRO, C.S.R.

DOYLE REPORTING, INC.
CERTIFIED STENOGRAPHIC REPORTERS
369 LEXINGTON AVENUE
NEW YORK, N.Y. 10017
TELEPHONE 212 - 867-8220

1
2 Q. Who handles the request in the first
3 instance at RKO?

4 A. It could come initially to Ruth Zitter or
5 Betty Levine or Bob Manby. Usually someone else in
6 the company, because people don't know where to start.
7 In fact, I have had calls and I just tell them to call
8 Betty Levine or Ruth Zitter or Bob Manby.

9 Q. Do people continue to call RKO seeking
10 merchandising licenses with respect to King Kong?

11 A. They have. It is difficult to determine
12 what merchandising means, but the obvious most recent
13 one has been in the papers, that big inflatable King
14 Kong on the Empire State Building. Universal licensed
15 that.

16 Q. When that request to license the King
17 Kong property in connection with the balloon on top of
18 the Empire State Building came to RKO, can you
19 describe how that was handled?

20 A. I think initially it was a request from a
21 company called D. F. Keith. I am not sure whether it
22 initially went to Universal and Universal referred it
23 to RKO and RKO prepared a license to permit the use of
24 the character in the balloon; Universal entered the
25 picture again claiming that it was merchandising, that

1 it was their license.
2

3 Q. But you think in the first instance the
4 request may have gone to Universal, and Universal
5 referred it to RKO, is that correct?

6 A. I am not sure but the wrong person
7 obviously, because it was Universal's right, so we had
8 them do it.

9 Q. But RKO prepared a license for this use,
10 is that correct?

11 A. It did.

12 Q. What property interest did that license
13 purport to grant?

14 A. The right to use the character King Kong
15 in the form of an inflated balloon.

16 Q. Are there any standing instructions at
17 RKO with respect to the licensing of any interest RKO
18 may have in the King Kong property?

19 A. I don't think there are any written
20 instructions. I have advised them that they have no
21 right to license, including that balloon of King
22 Kong, the character or name, all in compliance with
23 the court order.

24 I think I testified in the first date of
25 that deposition we still haven't resolved who has the

right to license the use of stills.

Q. Am I correct that you also haven't resolved the question of who has the right to license clips from the movies?

A. No, that has never been an issue. RKO has the right to license clips.

Q. Has the exclusive right to license clips?

A. Yes. Between Universal and RKO, yes. I don't think Universal disputes that. If they do, I am not aware of it.

Q. When a request is made of RKO to license the King Kong property, are you ever consulted with respect to the question of whether or not RKO has the right to grant a license request?

A. Yes. I have just explained that in connection with the big balloon.

Q. Can you recall any other instances where you have been consulted?

MS. FAUCHER: Forever?

MR. GALLATIN: Yes.

A. You mean at any time? Not since this Universal case?

Q. I am sorry; since the declaratory judgment action was handed down in the California

1
2 Q. Does RKO ever refer potential King Kong
3 licensees to Universal?

4 A. We referred the balloon back to them. If
5 it came from them initially, I am not sure.

6 I know another one. Budweiser Beer wants
7 to do a King Kong series of ads with King Kong in it,
8 and we haven't determined whether they want to use a
9 still of the Empire State scene, which would be one
10 thing, or if they are going to use a drawing of the
11 Empire State scene. That is probably Universal's
12 right to give it to them, but we haven't had a
13 discussion about it really with Universal.

14 That is a case where the Budweiser ad
15 agency or law firm were referred back to us by
16 Universal. It wasn't the balloon, and Universal
17 claims that referral was by someone who didn't know
18 what he was talking about. I don't know how that has
19 been resolved. I am inclined to think Universal has
20 the right to do it.

21 Q. Do I understand correctly that the
22 Budweiser people first approached Universal on this
23 deal and Universal referred them to RKO?

24 MS. FAUCHER: I object to the form of
25 the question.

1
2 A. They first, the Budweiser people or their
3 lawyers, I think it is in correspondence, went to
4 Universal. Someone at Universal, unknown to all of us
5 at the moment, referred them to RKO, and then I guess
6 I must have discussed it with Joe DiMuro and he says
7 he believes it is Universal's right, and I am inclined
8 to think he is right, but I think there has been so
9 much delay that I think Budweiser may have abandoned
10 the campaign.

11 Q. Can you describe a bit more fully how
12 Budweiser wanted to use the still or the drawing of
13 the scene of King Kong on top of the Empire State
14 Building?

15 A. We have it in a document form. Did you
16 get the document, a reproduction of documents here?

17 Q. I believe we may have a document relating
18 to the Budweiser deal, but can you describe it now?

19 A. As I recall, all we got was a Xerox copy
20 of an outline, it looked like a cartoon of the Empire
21 State scene. I forget what the copy said.

22 This may never have been produced to you.
23 It may be in the folder on my table. You have never
24 seen it?

25 Q. I don't think we have.

1
2 A. I will look for that.

3 Q. Is this a picture of King Kong that is to
4 be used or that Budweiser was proposing to use in
5 conjunction with an advertisement?

6 A. Yes, the Empire State scene, whether it
7 was to be a photographic reproduction or a cartoon, I
8 couldn't tell from the piece of paper they sent. It
9 was a Xerox.

10 Q. If Budweiser is proposing to use the
11 still itself, it is RKO's position that RKO alone has
12 the right to grant that right, is that correct?

13 A. No. We alone have the right to grant the
14 right to use the still, but I don't know if we can
15 grant the right to use the still in connection with
16 the advertisement. I don't know the answer to that.

17 Q. Is it possible that both RKO and
18 Universal would have to grant licenses in connection
19 with this use?

20 A. That would be my proposed solution in all
21 of these little disputes rather than waste the time
22 and effort.

23 Q. It is not resolved, I take it, as to
24 whether RKO would have the right to license the use of
25 a drawing of King Kong on top of the Empire State

Building if in fact that is what Budweiser wanted to do in connection with its advertisement?

A. In my opinion, I don't think RKO would have the right under that decree.

Q. Has that been resolved between RKO and Universal?

A. The only time it has come up is possibly in connection with this Budweiser thing, and I don't know how that finally has been resolved. I think it just faded away. I will check for you.

Q. Are you familiar with an instance in which RKO licensed a company called Pop Tart to use a caricatured cartoon drawing of King Kong?

A. When would that have been?

Q. This has been marked as Exhibit 75 in the prior session of your deposition.

A. I don't think I ever ran into this one.

Q. Would you look at the attachment.

A. I have to check my records to see if I had anything to do with it.

Q. Does that attachment seem to be a license from RKO?

A. It does.

MS. FAUCHER: I object to the form of

1
2 Dino DeLaurentis remake in 1976, and that is my only
3 knowledge of publishing the story of King Kong in a
4 book as such.

5 I think there were requests for a cartoon
6 story depiction of it in a book. I don't know when.
7 Probably in the sixties or so.

8 Q. Has RKO granted such licenses for a
9 cartoon publication?

10 A. I think they have. The records will
11 show. I can't remember precisely. I think you will
12 find it in the information that you got for such
13 licenses.

14 Q. Does RKO currently have the right to
15 license book publication of the King Kong story?

16 MS. FAUCHER: I object to the form of
17 the question.

18 A. No.

19 Q. Do you know who does?

20 A. I don't know whether Universal has it or
21 Richard Cooper. RKO never had publication rights
22 under the Cooper contract.

23 Q. Did Cooper ever have the right?

24 MS. FAUCHER: I object to the form of
25 the question.

1 the legal opinions with respect to the exploitation
2 but not for the exploitation as a business purpose.
3

4 Q. But you gave legal opinions as to the
5 exploitation of the King Kong property, including
6 defining what RKO's rights were and the like, is that
7 correct?

8 A. I don't know whether we actually gave
9 opinions during that period or not, but we rendered
10 legal services in connection with the property, yes.

11 Q. Up until the Universal versus RKO
12 litigation was commenced in California in the 1970's,
13 were you aware of any challenges to RKO's claim of
14 exclusive rights in the property?

15 A. If you recall, I personally was not
16 involved in this until Paul Quinn became ill, but
17 speaking as the voice of RKO, I think there were some
18 problems which you may have found in the files.

19 Q. Can you describe those problems for me?

20 A. Now we are into the question of privilege
21 which I don't like to invoke but which I can't waive,
22 because there may be correspondence concerning these
23 between the lawyers and the company, or lawyers and
24 lawyers and the company.

25 Q. Did these problems involve Richard

1
2 Cooper's claim of rights?

3 A. To really be correct, it wasn't Richard
4 Cooper at the time, it was his father, Marion C.
5 Cooper, who was producer of the picture. It involved
6 general Cooper claims, yes.

7 Q. Were those claims relating to publishing
8 rights that Mr. Cooper may have retained?

9 A. Yes, I think they were. Actually all of
10 this information from me would have to come from
11 documents which I think we produced, so I just ask you
12 to rely on the documents rather than my recollection.

13 Q. Did Richard Cooper or his father, Marion
14 Cooper, ever control RKO's licensing of the King Kong
15 property?

16 A. Not to my knowledge, direct knowledge or
17 from information in the files. I have never seen
18 that.

19 Q. Did he ever demand the right to approve
20 licenses?

21 A. Not that I know of.

22 Q. Did he ever exercise any control over the
23 quality of King Kong products licensed by RKO?

24 MS. FAUCHER: Are you talking of both of
25 them?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. GALLATIN: Either of them.

A. Not that I know of.

Q. Pursuant to the so-called tripartite agreement between RKO, Dino DeLaurentis and Paramount whereby the 1976 King Kong remake was made and exploited, did Dino DeLaurentis or Paramount have the right to merchandise the King Kong property?

MS. FAUCHER: I object to the form of the question.

A. If you look at the document, I think that is what it says.

Q. Did they in fact merchandise the King Kong property pursuant to the tripartite agreement?

A. Yes.

Q. Did RKO control Dino DeLaurentis' or Paramount's merchandising in any respect?

A. I think everything was submitted to RKO for approval. Whether that was called for under the agreement or just done, I don't recall. But that you can find out too.

Q. Did Cooper ever control Dino DeLaurentis's or Paramount's merchandising in any respect?

A. I wouldn't know, but I doubt it.

Q. Did Universal ever control Dino DeLaurentis's or Paramount's merchandising in any respect?

A. Not that I am aware of. The subject of the termination of the Dino DeLaurentis rights and Paramount's rights in Universal.

(Recess taken)

Q. I show you what has been previously marked in this deposition as Exhibit 69. You have identified it previously as one of the documents comprising the tripartite agreement between RKO, Dino DeLaurentis and Paramount. Are you generally familiar with this agreement?

A. Your description of it is not quite precise. The only tripartite agreement that I know of is between Paramount, RKO and Dino DeLaurentis with respect to merchandising, not the remake, and this 69 is not part of the tripartite agreement. It is just a basic licensing agreement to do the remake.

Q. Are you generally familiar with this agreement?

A. Yes.

Q. Were you involved in the drafting of this agreement?

Regan

172

1

A. Probably peripherally.

2

3

4

Q. Have you ever had occasion to review or interpret this agreement as your duties as a lawyer for RKO?

5

6

A. Yes.

7

8

Q. Were you involved in the drafting or negotiations of any amendments to this agreement?

9

A. Yes.

10

11

12

13

Q. Is it fair to say that you came to have a working understanding of the legal significance of the terms of this agreement and its amendments on behalf of RKO?

14

15

16

A. I don't know what you mean by working understanding. Whenever I had a question on this or any of the agreements, I would read it again.

17

18

19

20

Q. What I meant by a working understanding is you achieved sufficient understanding that you could give legal advice as to the terms and conditions of this agreement.

21

22

23

24

25

A. Yes.

Q. Directing your attention to paragraph 18

of Exhibit 69, it reads, "Purchaser agrees that nothing will be done which will in any way diminish or ridicule the character 'King Kong' or in any way

1
2 diminish the goodwill attributable to the name,
3 likeness or character of the character 'King Kong' and
4 that purchaser agrees to adhere to the character as
5 originally developed by owner."

6 Do you see that paragraph?

7 A. Yes.

8 Q. Did I read it correctly?

9 A. You did.

10 Q. Do you know why paragraph 18 was included
11 in this agreement?

12 A. I can conjecture why. I didn't prepare
13 that paragraph.

14 Q. Was it --

15 A. I think we have done it in other license
16 agreements. It is just to preserve the character King
17 Kong as he is or was known to the public.

18 Q. Was it included to protect RKO's property
19 rights in King Kong?

20 A. Yes.

21 Q. What property rights?

22 A. Rights in the name, character, story of
23 King Kong.

24 Q. Does that include trademark rights?

25 A. It would.

1
2 A. Excuse me. The registration. The
3 trademark was registered.

4 Q. Do you know what the circumstances were
5 under which this assignment was granted?

6 A. Again, if you look at the documents, I
7 think that was provided in a merchandising agreement
8 that the trademark would be assigned to RKO as
9 licensor ^{after} ~~and until~~ the expiration of the merchandising
10 license.

11 Q. Did RKO continue to hold Mego's trademark
12 registration after the Universal v. RKO settlement of
13 the California litigation in 1980?

14 A. They continued to hold -- you mean retain
15 it -- yes, until recently. I think we assigned it to
16 Universal.

17 MR. GALLATIN: I would like to mark this
18 as Exhibit 80.

19 (Document marked Defendants' Exhibit 80
20 for identification, as of this date.)

21 Q. I hand you what has been marked as
22 Exhibit 80 for identification and ask you if you
23 recognize that document and the attachment.

24 A. I do.

25 Q. Can you describe it for the record?

1
2 Universal in settlement of the RKO v. Universal
3 litigation in California that was commenced in 1975?

4 A. I think both cases, the Federal and the
5 State case. The State case was a breach of contract
6 action, and the Federal was basically a copyright.

7 Q. From the date of the assignment from Mego
8 Corporation to RKO General, which is July 18, 1979 as
9 reflected in Exhibit 79, to the date of the assignment
10 from RKO to Universal, which is January 3, 1983 as
11 reflected in Exhibit 80, was any use made of the Mego
12 trademark?

13 A. Not that I know of. I will have to check
14 but I can't think -- was it toys and place sets?

15 Q. The registration is for toy animal
16 figures and place sets.

17 A. There was a promotion in California, as I
18 recall, in which they wanted to use little toy King
19 Kongs, and it was RKO that wanted to use them. I
20 don't think we ever let them do it. So I don't recall
21 any use of the trademark in that period.

22 Q. Would you look at the first page of
23 Exhibit 80. This is the letter in which Mr. DiMuro
24 requested the assignment of the Mego trademark. At
25 the bottom of the letter there is the notation cc with

1
2 property?

3 A. I have to look at our files. I think we
4 may have and copied Universal, I am not sure, or sent
5 it to Universal and said make your move, but I am not
6 sure of any of that. I have to check.

7 Q. Did RKO understand that the effect of the
8 declaratory judgment entered into December 1976 was to
9 declare that the King Kong story was in the public
10 domain?

11 A. I suppose so to the extent that some of
12 it might be.

13 Q. And did RKO understand that the effect of
14 the declaratory judgment entered in December 1976 was
15 to declare that RKO did not have a protectable
16 trademark right in the property of King Kong?

17 A. No.

18 Q. Did RKO believe after the judgment was
19 entered in December 1976 that it continued to have a
20 trademark interest in the property of King Kong?

21 A. I don't know if we consciously averted to
22 the problem, but I would think if it arose, I would
23 think we would say yes, we did.

24 Q. Did RKO believe that it continued to have
25 the right to continue licensing of that trademark

Regan

189

right?

A. No. We couldn't license it.

Q. But it --

A. I am afraid my prior answer means there was a trademark right in King Kong. Probably Universal had it by then. I see what you mean. Yes.

Q. Do I take it now that your answer is that after the declaratory judgment was entered in December 1976, RKO no longer believed that it had a trademark right in the property of King Kong; is that your testimony now?

A. If you are talking fact, I don't think the issue ever arose. I just have to speculate that any trademark rights in the character King Kong, in the name, now belong to Universal or Cooper. When I say that I am speaking as of 1981, because I had never seen the Cooper assignment to Universal. I had not seen the Cooper assignment to Universal at that time. I only saw it when I got involved in this case, so Cooper or Universal had trademark rights, not RKO.

Q. Is it correct, though, that the issue as to who had trademark rights in the property never arose, so far as RKO was concerned, after the entry of the 1976 judgment?

Regan

190

1 A. Not to my knowledge. There was no
2 discussion of it.
3

4 Q. At this point, you were fully involved in
5 sorting out what RKO's rights were after the 1976
6 judgment, is that not correct?

7 A. We were not consciously sorting out the
8 right. We had the judgment and read it if the problem
9 came up. I wasn't fully involved. It was just
10 occasional.

11 Q. But you had responsibility for advising
12 RKO as to what the effect of that judgment was and who
13 had rights under it, isn't that correct?

14 A. I would be consulted on those points,
15 yes.

16 Q. So if a dispute arose as to who had
17 continuing trademark rights in the King Kong property,
18 you would have been fully aware of it?

19 A. I would assume so.

20 Q. After the Universal judgment was entered
21 in December 1976, did RKO continue to police what it
22 considered to be trademark infringers with respect to
23 the property of King Kong?

24 A. As I said in response to an earlier
25 question, policing the protection of the character,

Regan

191

whether it is trademark infringement or passing off or copyright infringement, I would have to look at the records to see if we had any occasion to do so.

Q. Would it have been --

A. Our practice would have been to either do it or refer it to Universal, not to neglect it.

Q. Was it RKO's position at that time that any such infringement of trademark was Universal's problem?

A. We took no position at the time. I don't think it ever came up, but we probably would have referred it to Universal.

Q. Did RKO continue to police what it considered to be copyright infringements with respect to the 1933 King Kong movie?

A. We would have but I don't know if we had any occasion to.

Q. But that policing of a copyright infringement would have been RKO's responsibility and RKO's responsibility alone, is that not correct?

A. With respect to the picture.

Q. You would not have referred any such infringements for action to Universal, is that correct?

1

A. I do.

2

3

Q. Who is Howard Levine?

4

5

A. Howard Levine at that time was a member of the legal department at Paramount Pictures.

6

7

Q. Can you describe this document for me in general terms?

8

9

10

11

12

13

14

A. Exhibit 83 consists of a letter dated November 18, 1976 from Howard A. Levine to me, with an attachment which is described as a throwaway offering King Kong T-shirts. On the T-shirt would be written Kong in large letters and a caricature or a copy of the Empire State scene. It is hard to determine what it is.

15

16

17

18

Mr. Levine of Paramount requested that I warn the manufacturer of the T-shirt company, an entity known as Photags in Los Angeles, California, not to continue using Kong in the graphic work.

19

20

Q. Do you recall whether you ever issued such a warning to Photags?

21

22

23

24

25

A. No, I don't.

(Document marked Defendants' Exhibit 84 for identification, as of this date.)

Q. I show you what has been marked as Exhibit 84 for identification and ask you, does this

1
2 refresh your recollection as to whether you issued a
3 warning to Photags?

4 A. It does.

5 Q. What is Exhibit 84?

6 A. Exhibit 84 is a letter from me to Photags
7 in Los Angeles, California dated November 22, 1976,
8 warning them to discontinue the production of the
9 T-shirt described in Exhibit 83, and also to advise us,
10 if they claim any rights to do so, where do they get
11 such rights.

12 Q. Do you recall receiving a response to
13 this letter?

14 A. No.

15 (Document marked Defendants' Exhibit 85
16 for identification, as of this date.)

17 Q. I show you Exhibit 85 for identification
18 and ask you if this refreshes your recollection as to
19 whether Photags responded to your warning of November
20 22, 1976.

21 A. Yes.

22 Q. What is your recollection?

23 A. I still have no recollection, but now all
24 I can say is we got a reply from them.

25 Q. And that reply is Exhibit 85?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. 85 is a reply from Photags with an attachment. 85 says, "Please refer to the attachment in answer to our letter," which was Exhibit 84.

Q. What is the attachment to Exhibit 85?

A. It is a Xerox copy of the clipping from the Hollywood Reporter reporting on the decision of the U.S. District Court judge in California, stating that the RKO Picture has fallen into the public domain and out of the legal grasp of RKO.

That is not what the court said; this is what the reporter wrote.

Q. Did you discuss Exhibit 85 and its attachment with anyone at RKO?

A. I couldn't recall. I don't recall.

Q. Did you in turn respond to Photags' letter of November 29 with the attached clipping, which is Exhibit 85?

A. I can't recall that either.

Q. Do you recall taking any further action against Photags?

A. I can't recall. I have to check our records.

Q. But you don't recall taking any further action with respect to Photags?

1
2 A. I don't recall it. That doesn't mean we
3 didn't. I have to check my records.

4 Q. Do you recall receiving other
5 communications from users of the King Kong property
6 referring to the 1976 declaratory judgment at or about
7 the time Photags wrote this letter to you which is
8 Exhibit 85?

9 A. I think an earlier exhibit from Wayne
10 Vogler referred to the public domain decision. There
11 were probably others, but I can't recall them.

12 Q. Was the substance of these communications
13 generally that the King Kong property had fallen out
14 of the legal grasp of RKO?

15 A. No. The substance would be that they
16 thought or were under the impression that King Kong in
17 all aspects was in the public domain.

18 (Lunch recess: 12:10 p.m.)

AFTERNOON SESSION

1:10 p.m.

WILLIAM M. REGAN, having been
previously sworn, resumed and testified further
as follows:

(Document marked Defendants' Exhibit 86
for identification, as of this date.)

EXAMINATION (Continued)

BY MR. GALLATIN:

Q. Since the last session of this deposition
on March 11th, have you had discussions with anybody
in connection with the license granted to H. K. Keith
with respect to the King Kong balloon that is to be
put atop the Empire State Building?

A. Yes. I had a call from Arnold
Kaufman of RKO when I was down in Georgia. He pointed
out the news item in the Times about the balloon and
he wanted to know if I or RKO had granted permission,
and I said no, Universal had. That was the last time
I heard anything.

Q. What else did Mr. Kaufman say, if
anything?

A. Nothing about King Kong.

Q. I show you what has been marked as

1
2 Exhibit 86 for identification. Would you please
3 review that document.

4 Do you recognize this document?

5 A. I do.

6 Q. Can you tell me what it is?

7 A. Yes. This is a memorandum from me to Al
8 Korn, vice president of RKO General, concerning the
9 use by James Beam Distilling Company of a special
10 commemorative bottle in the shape and likeness of King
11 Kong himself.

12 Q. I direct your attention to the third
13 paragraph of this memorandum, specifically to the
14 sentence which reads, "However, the commemorative
15 fifths, I assume, will be sold at a substantial price
16 and it will be damaging RKO's rights in the name and
17 character 'King Kong' to allow replicas of the
18 character to be sold without copyright or trademark
19 designation in favor of RKO General, Inc."

20 Do you see that sentence?

21 A. Yes.

22 Q. First, to your knowledge, were
23 commemorative fifths ever sold?

24 A. Yes. I have one. Unopened.

25 Q. Was a designation of copyright or

1 trademark rights in favor of RKO General, Inc. put on
2 those fifths?
3

4 A. I don't know. I have to look. I happen
5 to have one.
6

7 Q. If in fact they were not sold with such
8 designations, in what way would the rights of RKO have
9 been damaged?
10

11 A. I don't know if there really would have
12 been, but in my untutored trademark opinion, it
13 probably would have been safer to do that.
14

15 (Document marked Defendants' Exhibit 87
16 for identification, as of this date.)
17

18 Q. I show you what has been marked as
19 Exhibit 87 for identification and ask you to review it
20 and tell me whether you recognize this document.
21

22 A. I do.
23

24 Q. Can you describe it for me?
25

26 A. It is a letter dated February 2, 1977
27 from me to Al Korn, vice president of RKO General,
28 concerning a conversation I had with Mr. Michael
29 O'Shea, director of marketing of Atari, with respect
30 to a video game called Pong and a prospective video
31 game called King Pong. In the letter I advised him
32 that I would try to arrange for people at RKO to talk
33

1
2 to him when he was in New York concerning the problem.

3 Q. Did RKO consider that a King Pong game
4 would conflict with any RKO interests in King Kong?

5 A. I think we would have taken that
6 position.

7 Q. Was Atari seeking a license from RKO to
8 put out its King Pong game?

9 A. The only thing I can say is from the
10 contents of this letter, that they apparently wanted
11 to avoid any problem and thus indirectly were seeking
12 a license.

13 Q. I direct your attention to the first
14 sentence of the second paragraph of Exhibit 87, "I
15 told Mr. O'Shea that I would communicate with the
16 interested parties to see if any arrangements could be
17 made to accommodate him."

18 What were the interested parties to which
19 you were referring there?

20 A. Alvin Korn and possibly Paramount, and
21 Norman Flicker of Dino DeLaurentis. I mention the
22 latter two because copies of Exhibit 87 were sent to
23 them at the time it was written.

24 Q. Was Universal an interested party?

25 A. No.

Regan

207

1

Q. Was Richard Cooper an interested party?

2

3

A. Not in the terms of this letter. Now they are, of course.

4

5

Q. Did Mr. Korn respond to this letter?

6

A. I don't recall.

7

8

Q. Do you know what the resolution of this matter with Atari was?

9

A. No, I don't.

10

11

Q. Do you know whether Atari ever put out a King Pong game?

12

A. No, I don't.

13

14

15

Q. What interest of RKO would RKO have believed a King Pong game would have infringed if Atari had gone ahead with the game?

16

17

18

A. I think the broad interest of passing off King Pong as a King Pong RKO product. Exploitation of the name.

19

Q. Anything else?

20

A. No.

21

22

(Document marked Defendants' Exhibit 88 for identification, as of this date.)

23

24

A. I am thinking more of that last answer. Can I expand on it?

25

Q. Yes.

1
2 A. I think further interest would be that
3 the character King Kong was not ridiculed or hurt by
4 the depiction that Atari contemplated. We certainly
5 would have looked into that at the time.

6 Q. Why would RKO have been concerned about
7 that?

8 A. Because they wanted to preserve the
9 character King Kong intact as we think the world loves
10 and knows him.

11 Q. If the character was not so preserved,
12 did RKO believe its rights in King Kong would be
13 jeopardized?

14 A. It would be damaged.

15 Q. That in fact RKO would lose such rights
16 because of the ridicule of the character King Kong?

17 A. Not lose rights but they would be
18 devaluated.

19 Q. Devaluated in the sense that the public
20 would not have a consistent image of King Kong, is
21 that what you mean?

22 A. I suppose so.

23 Q. I show you what has been marked as
24 Exhibit 88 for identification and ask you to review it
25 and tell me whether you recognize Exhibit 88 and the

Regan

215

produced to us stapled together, and ask you please to review them.

Are you finished reviewing the document?

A. Yes.

Q. Do you recognize these documents?

A. I recognize with respect to Exhibit 90, I recognize my own memo which consists of the first two pages of the exhibit, and I must have seen the others before, which are three attachments.

Q. Can you describe generally the subject matter of Exhibit 90, the pages that comprise Exhibit 90?

A. Yes. Fairchild Publications was about -- was asked to publish an advertisement for Young California Shoes, Inc. presenting a revolutionary three-point sandal called King Thong. This was called to our attention by Fairchild Publications, Inc., publisher of Footwear News, before they cleared the copy for the ad.

RKO, through me, objected to it, as Exhibit 90 says, as a rip-off of King Kong, and also advised the Fairchild people that Paramount, Dino DeLaurentis, and H. H. Brown Shoe Company would Probably object. Henry Forman, the lawyer for

1
2 Satterlee & Warfield, called me and advised me that
3 they would drop the ad.

4 Q. The first two pages of Exhibit 90, I take
5 it that is your handwriting in the handwritten
6 portion, is that correct?

7 A. It is.

8 Q. Can you read your handwriting on the
9 first page, please?

10 A. Yes. "1/20/77, advised Ms. Pelz," who is
11 a lawyer of the firm representing the shoe
12 manufacturer, "(A) 'King Thong' obvious 'rip-off' of
13 KK - that we could not approve - she must proceed at
14 own risk; (B) advised her of pending trademark
15 litigation with H. H. Brown; (C) gave her name and
16 phone of H. H. Brown attorneys (trademark)." By that,
17 I meant their trademark attorneys. "(D) Ms. Pelz
18 would advise Fairchild about ad."

19 On the second page of Exhibit 90 my
20 handwriting continues, "1/20/77, P/C from Henry Forman
21 of Satterlee Warfield, attorneys for Fairchild
22 Publications, who previously advised Ms. Pelz that
23 Fairchild would not run the ad. He will reconfirm
24 this to Ms. Pelz who was under the impression that I
25 said it could be worked out. I told Mr. Forman I

1
2 advised Ms. Pelz that there were four potential
3 objectors, (RKO, H. H. Brown, DDL and Paramount) and
4 that she would proceed at her own risk."

5 Q. Why did you include H. H. Brown as a
6 potential objector?

7 A. Because they had a registered trademark
8 for King Kong work shoes.

9 Q. And --

10 A. I presume they might object to any other
11 shoe.

12 Q. What did you tell Ms. Pelz about the
13 pending trademark litigation with H. H. Brown referred
14 to on page 1 of Exhibit 90?

15 A. I don't recall the conversation precisely
16 but apparently no more than what I just said to you,
17 that there was a trademark suit pending and it
18 involved shoes.

19 Q. Who were the parties to that trademark
20 suit?

21 A. I don't recall whether it actually got to
22 a suit or it was just a claim. The parties were H. H.
23 Brown Shoe Company, Worcester, Massachusetts, and RKO
24 General, Inc. I don't think there were any other
25 parties. The documents would show that.

unchanged that RKO still had the rights.

Q. Is that the reason why Universal was not identified as a potential objector to Ms. Pelz?

A. It is a possible reason. I don't know what the reason was. It could have been my mistake.

Q. But you did identify H. H. Brown with whom you were engaged in a trademark dispute also, didn't you?

A. Yes. I am not sure if the H. H. Brown was discontinued by RKO at some point. I don't know when.

(Document marked Defendants' Exhibit 91 for identification, as of this date.)

Q. I hand you what the reporter has marked as Exhibit 91 for identification and I ask you to review it and tell me if you recognize it.

A. Yes, I remember this one.

Q. Did you ever buy a King Kong plant?

A. No.

Q. Did you ever do anything in response to this letter?

A. Yes, I am pretty sure we wrote them a letter.

Q. Do you know whether you wrote a letter?

1
2 A. If you let me look at my files, I can
3 tell you. I am pretty sure we did, though. If you
4 haven't got such a letter, I am almost certain it
5 exists.

6 Q. In the review of the documents you
7 produced to us we have not seen any such letter in
8 response to this use of King Kong as a plant. If such
9 a letter exists, would you produce it for us?

10 A. Yes. This was such a humorous one, I am
11 pretty sure I wrote them a letter.

12 Q. Did you make it a practice to write
13 letters as to the humorous uses of King Kong?

14 A. No. What I meant by that, the reason I
15 remember it is because it was humorous.

16 (Document marked Defendants' Exhibit 92
17 for identification, as of this date.)

18 Q. I hand you what the reporter has marked
19 as Exhibit 92 for identification and ask you to review
20 it and tell me whether you recognize that.

21 A. I recognize it now, yes.

22 Q. Did Captain Kool or any of the Kongs ever
23 come to RKO to ask whether they could call their
24 musical group Captain Kool and the Kongs?

25 A. Not to my knowledge, no.

1
2 Q. Do you know if RKO ever gave them
3 permission to allow them to call their group Captain
4 Kool and the Kongs?

5 A. I doubt it.

6 Q. Who is Robert Oppenheimer?

7 A. He was a practicing lawyer in California
8 at the time, but he was also I believe general
9 counsel, the equivalent for Dino DeLaurentis
10 Corporation.

11 Q. Did you investigate or take any action
12 against Captain Kool and the Kongs?

13 A. No, I don't think we did. I don't recall
14 it.

15 (Document marked Defendants' Exhibit 93
16 for identification, as of this date.)

17 Q. I hand you what the reporter has marked
18 as Exhibit 93 for identification and ask you to review
19 it and tell me whether you recognize that document.

20 A. Yes.

21 Q. Can you tell me what this document is?

22 A. Yes, this is a telex from W. R. Hulbert
23 of the Boston law firm of Fish & Richardson
24 representing H. H. Brown Shoe Company, of Worcester,
25 Massachusetts. It is addressed to my law firm and

1 confirms a message he left with my secretary in my
2 absence that his client, H. H. Brown Shoe Company, has
3 prior rights to "King Kong" and the representation of
4 the gorilla as trademarks for all kinds of footwear,
5 and he rejects any suggestion that his client needs a
6 license to use these marks as it is implied in my
7 letter to him of July 12, 1976.
8

9 Further he objects to any third-party use
10 of the term King Kong or the representation of the
11 gorilla with respect to footwear.
12

12 Q. Did you receive this telex on or about
13 July 23, 1976?

14 A. I presume so. Just from the date of the
15 telex. I don't see any stamp mark "Received" which we
16 usually had.

17 Q. Whose handwriting is that in the upper
18 right-hand portion of the document?

19 A. It is not mine. I don't know.

20 Q. Is there a file at RKO entitled King Kong
21 merchandising trademarks?

22 A. There is a file King Kong trademarks, I
23 think, but not merchandising.

24 Q. Have we seen the documents that are in
25 that file? Have they been produced to us?

1 A. Yes.

2
3 Q. What did you understand by Mr. Hulbert's
4 statement that H. H. Brown had "prior rights to King
5 Kong and the representations of a gorilla as a
6 trademark on footwear"?

7 A. Just what it says. It means exclusive
8 rights, I suppose.

9 Q. Did you take any action after you
10 received this telex in response to the telex?

11 A. I took action with respect to the entire
12 problem either before or after the telex. I don't
13 know when I started.

14 Q. Perhaps the best thing is we can follow
15 it through with the documents then that we have been
16 furnished.

17 A. Is this the first document?

18 Q. Yes.

19 A. I must have written him a letter,
20 according to that.

21 (Document marked Defendants' Exhibit 94
22 for identification, as of this date.)

23 Q. I will hand you what has been marked as
24 Exhibit 94 for identification, which is a letter with
25 an attachment, and ask you please to review it and

1 tell me whether you recognize Exhibit 94.

2 A. Yes, I recognize Exhibit 94.

3 Q. Can you tell me, please, what Exhibit 94
4 is?

5 A. It consists of a letter with an
6 enclosure, a one-page letter and an enclosure
7 consisting of seven pages of material furnished by the
8 U.S. Patent and Trademark Office. The letter was sent
9 to me by Gordon King, an attorney with Coudert
10 Brothers. Coudert Brothers had been retained by RKO
11 to represent it in the matter of the H. H. Brown Shoe
12 Company use of King Kong with respect to footwear.

13 Q. What is the material that is enclosed
14 with Mr. King's letter from the Patent and Trademark
15 Office?

16 A. The material furnished by the Trademark
17 Office reflects the registered trademark of H. H.
18 Brown Shoe Company and King Kong with respect to
19 footwear, and includes a pictorial representation of
20 the claimed use.

21 MS. FAUCHER: I am going to object to
22 that, because I don't think that the attachment
23 at all reflects H. H. Brown's registration.

24 MR. GALLATIN: You can object to the
25

1
2 answer, but the answer is the testimony of the
3 witness.

4 MS. FAUCHER: I am objecting to your
5 repeated request to ask the witness to describe
6 various exhibits which obviously speak for
7 themselves, and I think you, aside from wasting
8 a lot of time, certainly don't need to ask the
9 witness to describe the document that speaks
10 for itself.

11 MR. GALLATIN: What wastes time are
12 objections to answers.

13 THE WITNESS: That is what I have been
14 answering, but otherwise I would just say read
15 the document itself.

16 (Document marked Defendants' Exhibit 95
17 for identification, as of this date.)

18 Q. I will hand you what has been marked as
19 Exhibit 95 for identification and ask you to review it
20 and tell me whether you recognize the document.

21 A. Yes.

22 Q. What is it?

23 A. Exhibit 95 is RKO's notice of opposition
24 in a proceeding before the Trademark Trial and Appeal
25 Board of the U.S. Patent and Trademark Office in the

matter of RKO General versus H. H. Brown Shoe Company.

Q. Whose signature is on pages 3 and 4?

A. Arnold Kaufman, vice president of RKO General at the time; now I believe senior vice president.

Q. Who made the decision to file this opposition?

A. Mr. Kaufman and I, I suppose jointly.

Q. Why did you make that decision?

A. To protect our interests in the King Kong name and likeness, et cetera. Also we had a license application for the production of King Kong footwear in Japan, I think it was. It was a bathing slipper, and we had to forego that because of this.

Q. Were you involved in the preparation of this notice of opposition?

A. A draft may have been sent to me by Coudert Brothers, but they were the primary composer of it.

Q. Were you actively involved in the opposition proceedings themselves?

A. Only to the extent that I talked to Gordon King or maybe other lawyers at Coudert Brothers, but they carried the ball. We retained them

1
2 Q. When did RKO first become aware of H. H.
3 Brown's use in interstate commerce of the trademark
4 King Kong?

5 A. I would say on or about the date of my
6 letter mentioned in that telex.

7 Q. Was that a letter of July 12 referred to
8 in Exhibit 93?

9 A. July 12, 1976.

10 Q. 1976.

11 A. I would say on or about June or July
12 1976.

13 Q. Am I correct that before your letter of
14 July 12, 1976, RKO never complained of or objected to
15 the use of H. H. Brown of the King Kong trademark in
16 connection with its footwear?

17 A. You are correct in that I don't know of
18 any objection or even being aware that use was being
19 made of King Kong for footwear.

20 Q. Did you discuss this answer of H. H.
21 Brown to RKO's notice of opposition with anyone at or
22 about the time it was filed?

23 A. You mean after receipt of the answer?

24 Q. Yes.

25 A. We didn't know about it before.

Q. Yes.

A. I undoubtedly discussed it with Coudert Brothers. Probably Gordon King. Possibly with my partner Paul Quinn at one point. I have a recollection of a meeting in his room.

Q. Did you have any discussions with anyone from H. H. Brown after reviewing this answer?

A. I talked to Mr. Hulbert at different times. I guess they are all prior to the proceeding. I would be in contact with them and leave it up to your lawyers.

(Document marked Defendants' Exhibit 97 for identification, as of this date.)

Q. I will show you what has been marked as Exhibit 97 for identification and ask you to review it and tell me whether you recognize that document.

Do you recognize this document?

A. Yes.

Q. Do you recall receiving this letter?

A. Yes.

Q. Can you describe it for me?

A. This is a two-page letter from Mr. Gordon King of Coudert Brothers. It is discussing the merits of opposition in the dispute.

1
2 Q. What dispute are you referring to?

3 A. Our claim that H. H. Brown Shoe Company
4 cannot use King Kong as a trademark.

5 Q. Would you please turn to page 2 of this
6 letter and the second line down from the top the
7 sentence begins, "You will recall our unsuccessful
8 efforts to establish early trademark use for secondary
9 merchandising."

10 Do you see that?

11 A. Yes.

12 Q. What were these unsuccessful efforts?

13 A. I read that a minute ago. I can't recall
14 the details of that at all. Maybe there is something
15 in our files or in the pleadings.

16 Q. Had Coudert represented RKO earlier in
17 connection with efforts to establish early trademark
18 use through secondary merchandising?

19 A. No. It must have been some phase of this
20 case.

21 Q. Referring to the first full paragraph on
22 page 2 of Exhibit 97, specifically to the sentence
23 that reads "In support of the first branch of its
24 argument, H. H. Brown Shoe will rely upon, one, its
25 own consistent use of the mark since 1935; two, the

1950 publication in the Official Gazette of its application to register 'King Kong'; and three, registrations of 'King Kong' by third parties not claiming through us, all of which have been published in the Official Gazette."

Do you see that sentence?

A. Yes.

Q. Are you familiar with or are you aware of the third party registrations to which Mr. King is referring in that sentence?

A. I think there may be something in our files on it. I don't recall any particulars. I think there may be an Official Gazette in the file, too.

Q. Are there a number of such registrations by third parties not claiming through RKO?

A. I don't recall. I don't recall the number if you mean by "many" a lot.

Q. But there are some?

A. I think there are some, but the file should show that.

Q. Did you have a trademark search done after receiving this letter with respect to King Kong?

A. After receiving Exhibit 97?

Q. Yes.

1
2 A. I don't think I did, no.

3 Q. Did somebody?

4 A. Not that I know of. A search must have
5 preceded it.

6 Q. Referring to the end of the letter which
7 reads, "In summary, Bill, in the light of H. H. Brown
8 Shoe's 40-year investment in the mark and our own
9 apparent lack of diligence in policing it, it would
10 seem that a showing of likelihood of confusion will be
11 necessary. For reasons alluded to above, this may be
12 a difficult task. Please let me know what you want
13 done."

14 Did you ever advise Mr. King what you
15 wanted done?

16 A. Apparently I called him four days later,
17 if you look at the handwritten note on page 1 of
18 Exhibit 97, but it doesn't discuss what we want done.

19 May I read that handwriting?

20 Q. Please do.

21 A. PC means phone call, 7/26/77, "Gordon King
22 matter adjourned 60 days. King will speak to attorney
23 for Brown again re settlement by perpetual license or
24 assignment and will consider copyright infringement
25 possibility because of caricature of KK on shoe

Exhibit 98 reads, "We have reviewed with our client the facts and circumstances relative to the above opposition and have concluded that for a number of reasons it is not in our best interest to continue that proceeding."

Do you see that sentence?

A. Yes.

Q. Why wasn't it in RKO's best interest to continue the proceeding?

A. Because we were going to fail and waste money and time.

Q. Did Universal ever attempt to intervene in this proceeding as a party?

A. I don't believe so.

Q. Were they aware of the proceeding?

A. I don't know.

Q. You never brought it to their attention?

A. I did not bring it to their attention, but -- I never brought it to their attention.

Undoubtedly in the lawsuit, the Universal lawsuit, this surfaced, possibly in my deposition.

Q. So it is your testimony that Universal was aware of this opposition proceeding with respect to H. E. Brown?

1 something in the record with respect to each one in
2 the file.
3

4 Q. Did RKO have a policy of purchasing items
5 which used the character and name of King Kong without
6 authorization from RKO?

7 MR. GALLATIN: During what time period?

8 Q. During any time period.

9 A. Not that I know of in any time period.

10 Q. Did your law firm have such a policy?

11 A. No.

12 Q. These items that are collected in the
13 unauthorized use, file, were they collected during a
14 specific time period? Do you know?

15 A. During the remake of King Kong, there was
16 a great rash of King Kong rip-offs, if you want to
17 call them that, and these were brought to our
18 attention from different sources. I can't recall any
19 particular source.

20 You will see in one where Robert
21 Oppenheim in exhibit something called an ad to our
22 attention. Another one was Levine in Paramount.

23 Q. Was this file created on or around 1976?

24 A. Yes. This particular file you are
25 talking about.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I am aware of.

Q. Can you tell me what the function of these licensing agents was?

A. Yes, to exploit the RKO films in any way that they could. From a remake down to dolls.

Q. Their function included exploitation of movie properties other than King Kong?

A. Yes. The whole library.

I limit that to O'Shea. I don't know what Clark's function was. He may have been just King Kong.

Q. I would like to refer you to page 34 of the first day of your deposition, specifically lines 11 through 19 where you set forth your definition of merchandising rights.

With that definition that is set forth there in mind, do you know what the total amount of revenues is that RKO has received from licensing King Kong merchandising rights?

A. No, but I can find that out.

Q. I would appreciate it if you would.

A. By merchandising rights, you mean this definition?

Q. I mean within that definition, that's

1

A. Yes, I believe through Mego.

2

3

Q. Do you know what Mego did?

4

5

6

7

8

A. No, but the records would show. I think Mego registered some trademarks, among other things, and they sold all kinds of articles including toilet paper, which is an extreme thing for King Kong, but that is all in the records which you should have.

9

Q. Did they market toys, for example?

10

A. I believe so.

11

Q. And clothing of any sort?

12

A. I don't remember clothing. Could be.

13

Soap, I think.

14

Q. Do you know over what period of time Mego

15

marketed King Kong items?

16

A. At least the last three years under the

17

remake of King Kong they have had licenses, and had it

18

for several years before that. It ought to appear on

19

one of the recent exhibits that you showed me, the one

20

that is also attached to the basic remake contract.

21

Q. You are referring to Exhibit 102?

22

A. That one, and then that update.

23

Q. Exhibit 105?

24

A. Yes. 102 shows an agreement began May

25

1st, 1975, but I thought there had been an agreement

Regan

288

prior to that. Maybe I am wrong. I have to check the records.

Then Mego should be on Exhibit 105. Drinking straws, stuffed pillows and model kits, under the remake Paramount license.

Q. Do you know if the Mego King Kong items sold well in Japan?

MR. GALLATIN: Objection to the form.

A. No, I don't.

Q. To your knowledge, was the 1933 King Kong movie well received in Japan?

MR. GALLATIN: I object to the question.

A. I really don't know. I have heard that it was, but I don't remember.

Q. From whom did you hear that?

A. Possibly Dan O'Shea, deceased. Maybe it was indicated in the records.

Q. During the period of time that RKO exploited merchandising rights with respect to the King Kong property, there were times when RKO became aware of uses of the name, character or story of King Kong which it had not authorized, is that correct?

A. Yes.

Q. Did RKO take any actions with respect to

these uses?

A. Yes.

Q. Did RKO have a program to ascertain when such uses occurred?

MR. GALLATIN: I object to the question.

A. No.

Q. What action did RKO take with respect to these uses?

A. It varied from letters of inquiry asking on what do you base your right to do whatever you did, to letters stating you are violating RKO's copyright and other property rights and stop. Sometimes, send us what merchandise you have left or destroy it. Give us an affidavit or in connection with the accounting, pay what you made out of it.

In connection with motion pictures, there were lawsuits. I can't think of any lawsuits involving any alleged violation of RKO's rights in King Kong other than the motion picture cases.

MS. FAUCHER: I would like to have this marked as the next exhibit.

MR. GALLATIN: Mr. Regan also testified previously today at least as to one use of the term Kong in which he took no action, and that

Regan

290

was in connection with that musical group.

MS. FAUCHER: The question asked him what actions were taken. What actions were not taken, I think that was gratuitous and unnecessary.

MR. GALLATIN: His response varied from one extreme to the other. I just pointed out that one extreme was to take no action at all.

MS. FAUCHER: No, I don't think that was what his response was at all, but the record will obviously show that. You can create whatever record you want to on your opportunity on redirect and I would appreciate that you wait until then to do so.

(Document marked Defendants' Exhibit 106 for identification, as of this date.)

Q. I would like you to look at what has been marked as Exhibit 106 and ask if you have ever seen the first page of that exhibit, which is a letter, and the attachment to that letter?

A. Yes. I have seen it.

Q. And the attachment to that letter is an advertisement for a movie entitled The New King Kong?

A. Yes.

Q. Did RKO take any action with respect to that movie?

A. Yes.

Q. What action did it take?

A. I don't know step by step but eventually it sued the distributor or producer or both. The initial suit was in Denver, Colorado in the Federal Court, and then there was a subsequent suit in California. I forget which city. Los Angeles Federal Court.

MS. FAUCHER: I would like to have this marked as Exhibit 107.

(Document marked Defendants' Exhibit 107 for identification, as of this date.)

Q. Can you tell me whether you have ever seen that exhibit before?

A. I don't remember whether I have ever seen this before. I would guess that I had but I don't remember.

Q. This article refers to a lawsuit involving RKO in the Denver United States District Court, is that correct?

A. Yes. That is the suit I just mentioned.

Q. That is the lawsuit you just mentioned?

1
2 A. Yes.

3 Q. What was the resolution of that lawsuit
4 brought in Denver?

5 A. They stopped, as I recall, distribution
6 of the picture completely, but then it surfaced in
7 California. I wasn't involved in the Denver suit. In
8 California, they changed the name of the picture to
9 A.P.E. and I think that ended the matter.

10 Q. Were you kept informed about the Denver
11 lawsuit?

12 A. I don't think I had much to do with that
13 at all. My partner at the time, Howard Breindel,
14 handled it.

15 Q. I believe you said that among the actions
16 taken by RKO when it became aware of a use of King
17 Kong that it didn't authorize was to write a letter of
18 inquiry. Was there a general form for that letter?

19 A. No. It would vary. Roughly the same
20 form, though.

21 Q. That was a letter that requested the
22 basis of the user's rights?

23 A. Yes. Sometimes you would see a violation
24 and you are not sure whether some licensee of yours
25 has done it before, so before you jump you make sure

1
2 you are not making a fool of yourself.
3

4 Q. Was your law firm responsible for writing
5 those letters?

6 A. Sometimes internally, but we would tell
7 them to write the same as you wrote for this other
8 case, and generally we did it.

9 Q. I believe that you also said that you
10 would write letters stating that the user was, in your
11 opinion, in violation of RKO's copyrights and other
12 property rights?

13 A. Yes.

14 Q. How would you determine which type of
15 letter to write?

16 A. It depends on what he was doing. If it
17 was use of a part of the film, it would be copyright.
18 If it was a toy or game or something, I think we would
19 say copyright anyway, if it wasn't precise.

20 Q. I am really more curious to find out how
21 you would determine to write a letter of inquiry or a
22 letter stating your position on RKO's rights.

23 A. The letters of inquiry maybe more with
24 respect to exhibition of the film without a license.
25 When we found out that they had gotten a license, who
thought they had a right to give it to them and

Regan

294

1
2 didn't. That is particularly true in the
3 16-millimeter field.

4 MS. FAUCHER: I would like to have this
5 marked as Exhibit 108.

6 (Document marked Defendants' Exhibit 108
7 for identification, as of this date.)

8 Q. I ask you if you have seen this letter
9 before.

10 A. Yes. Whether I saw it at the time it was
11 written I don't know, but I have seen it.

12 Q. Do you recognize the signature at the
13 bottom of the letter?

14 A. Yes, Paul J. Quinn. Deceased.

15 Q. Is this letter typical of the letters you
16 have described, the content of this letter typical of
17 the letters you described which would inform a user of
18 RKO's rights?

19 MR. GALLATIN: Objection to the form of
20 the question and also disregards prior
21 testimony.

22 A. Broadly, it is typical.

23 Q. Do you know if a response was received to
24 this letter?

25 A. No, I don't.

(Document marked Defendants' Exhibit 109 for identification, as of this date.)

Q. Have you ever seen that before?

A. I guess I have. They are referring to a letter from me of August 6, 1975.

Exhibit 108 is from Paul Quinn, dated July 9, 1975.

Q. Is it your belief that the Allison Manufacturing Company referred to in Exhibit 109 is the same Allison Manufacturing Company referred to in Exhibit 108?

A. Yes, I believe. It looks like it.

Q. Do you recall writing the letter to the Allison Manufacturing Company apparently August 6, 1975?

A. No, but I assume that I did from what they say. There must be more correspondence. There must be a letter answering Paul Quinn's and then my letter back.

Q. With respect to a letter written by you on the 6th, I represent to you it is my belief that has not been produced to us in response to the subpoena. Can you explain why that would not have been produced?

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. No, just that nobody found it. I will look for it. You haven't got the August 6th letter?

Q. No.

MR. GALLATIN: May I just point out that these are documents, Exhibits 108 and 109 are documents that were produced to us by Townley & Updike and I don't know that -- was something produced to you pursuant to a subpoena?

MS. FAUCHER: I am speaking of your subpoena. They were the same documents that were produced.

A. I would guess there are two documents missing, one from Allison in response to the July 9 letter.

Q. Would it be normal procedure for you to organize your files so that all the correspondence relating to Allison Manufacturing Company would be in the same file?

A. Yes, I would think so. But I wouldn't bet on it.

Q. During the period of time that Paramount exploited merchandising rights with respect to King Kong, are you aware of Paramount contacting any parties to complain about their use of King Kong?